

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WILLIAM E. DUGAN, *et al.*,)
vs.)
Plaintiffs,)
vs.)
) CIVIL ACTION
)
) NO. 08 C 0641
KEVIN MISCH TRUCKING)
& EXCAVATING, INC., an Indiana)
corporation,)
)
Defendant.)

**PLAINTIFFS' MOTION TO REOPEN CASE AND FOR
ENTRY OF JUDGMENT AGAINST DEFENDANT**

NOW COME Plaintiffs, WILLIAM E. DUGAN, *et al.*, by their attorneys, and move the Court for the entry of an order to reopen this action and entering judgment against Defendant. In support of the Motion, Plaintiffs state as follows:

1. This action was originally brought by the Plaintiffs, the Trustees of the jointly administered, labor-management employee benefit plans collectively known as the Midwest Operating Engineers 731 Fringe Benefit Funds, alleging, *inter alia*, that Defendant breached its obligations under the terms of the collective bargaining agreement entered into with Local 150 of International Union of Operating Engineers, AFL-CIO, and the Agreements and Declarations of Trust under which the Plaintiff Funds are maintained. Specifically, Plaintiffs allege that Defendant failed to submit contribution reports and remit payment of fringe benefit contributions due thereon for work performed on its behalf by beneficiaries of the Plaintiff Funds. The Complaint was brought pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1132, 1145.

2. On February 1, 2008, this court administratively dismissed this action without prejudice and ordered Defendant to submit to an audit of its payroll books and records for February 2006 through the present date. The Court retained jurisdiction to enforce the February 1, 2008 order and enter final judgment against Defendant.

3. On March 4, 2008, the Summons and Complaint was served on the Registered Agent (by tendering a copy of said documents to Carol Hurt, his mother) at his residence (a copy of the Summons and Affidavit of Service is attached hereto). Therefore, Defendant's answer was due on March 24, 2008. As Defendant has failed to timely answer the Complaint, Plaintiffs respectfully request entry of default judgment pursuant to F.R.Civ.P. Rule 55.

4. Defendant has submitted all monthly fringe benefit contribution reports for the months of September 2007 through April 2008 required to be remitted to Plaintiff Funds. However, Defendant has failed to remit payment of all fringe benefit contributions due thereon. Accordingly, the following contributions are due the Plaintiffs from Defendant:

	<u>Contributions</u>
Welfare Fund	\$25,658.10
Pension Fund	\$21,381.75
Apprenticeship Fund	\$ 2,420.55
Vacation Fund	\$ 4,841.10

5. Defendant's payment of the fringe benefit contributions due Plaintiffs were made in an untimely fashion pursuant to the collective bargaining agreement and Trust Agreements. Therefore, Plaintiffs assessed liquidated damages against the Defendant in the amount of ten (10%) of all contributions due and untimely received, for the period September 2007 through March 2008 as authorized by the Trust Agreements, as set forth below:

Liquidated
Damages

Welfare Fund	\$2,454.27
Pension Fund	\$2,045.24
Apprenticeship Fund	\$ 229.20
Vacation Fund	\$ 458.37

6. Plaintiffs have incurred costs of \$415.00 and attorneys' fees of \$588.75 in this matter.

7. For all the reasons stated, the Plaintiffs hereby move the Court for the entry of an Order reopening this action and for entry of judgment against the Defendant. Specifically, Plaintiffs request:

- A. That judgment be entered in favor of Plaintiffs and against Defendant to include the amount of \$54,301.50 for contributions and \$5,187.08 for liquidated damages, for a total of \$59,488.58.
- B. That judgment be entered in favor of Plaintiffs and against Defendant to include \$415.00 for costs and \$588.75 for attorneys' fees.
- C. That Plaintiffs have such further relief as may be deemed just and equitable by the Court.

/s/ Cecilia M. Scanlon

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that she electronically filed the foregoing document (Motion) with the Clerk of Court using the CM/ECF system, and further certifies that I have mailed the above-referenced document by United States Mail to the following non-CM/ECF participant on or before the hour of 5:00 p.m. this 27th day of March 2008:

Mr. Kevin Misch, Registered Agent
Kevin Misch Trucking & Excavating, Inc.
2025 Cardinal Drive
Wheatfield, IN 46392

Mr. Kevin Misch, Registered Agent
Kevin Misch Trucking & Excavating, Inc.
2447 W 1450 N
Wheatfield, IN 46392

/s/ Cecilia M. Scanlon

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